pears very tenable. There was no adverse claim to the property, and the possible invalidity of the restrictive covenant would have no effect in determining whether it was a cloud on the title. POMEROY, EQUITABLE REMEDIES, § 727 (note), enumerates many of the instruments and proceedings which have been removed as clouds on title, but he nowhere mentions a covenant in a deed as a cloud on the title thereby conveyed. He says, "Instruments and proceedings of every conceivable nature have been removed as clouds on title" but does not include covenants of the granting instrument itself. In *Parker* v. *Shannon,* 121 Ill. 452, 13 N. E. 155, the court says, "Such clouds on title as may be removed by courts of equity are instruments or other proceedings in writing which appear upon the records, and thereby cast doubt upon the validity of the record title." In the principal case, the covenant in the deed could in no way be said to cast any doubt upon the validity of the record title. The plaintiff claims that the covenant is invalid and unenforcible, and requests that the court of equity remove it. But if it is not a cloud on the title, as the above cases seem to indicate, there seems to be no basis for the equitable jurisdiction of the case. Justice GRAY says in the dissenting opinion, "As an appeal to the equity powers of the court, it is necessary that the case shall fall under some recognized head of equity jurisdiction. I know of no branch of that jurisdiction which would comprehend such an action as this. * * * When a person brings an equitable action, he must maintain it upon some equitable ground." These words of Justice GRAY seem to represent the truth of the matter, as contained in the authorities, better than does the prevailing opinion. The majority maintain that equitable jurisdiction can be properly invoked by a party to cancel a covenant in his grant; but they cite no precedent or authority to substantiate the statement.

REMANDING OF CAUSES—MANDAMUS TO COMPEL.—One Harding, a citizen of the state of Illinois, commenced an action against several corporations, alleged to have been created by and citizens of the State of New Jersey, in an Illinois state court. Upon the application of the Corn Products Company, one of the defendant corporations, the case was removed to the United States Circuit Court, whereupon a motion was filed by the petitioner to have the case remanded, which motion was overruled. 182 Fed. 421. Application was then made to the Supreme Court of the United States for a writ of mandamus to compel the Circuit Court of the United States for the Northern District of Illinois to remand the cause to the state court. *Held,* that the writ of mandamus should not issue. *Ex parte Harding* (1910), 31 Sup. Ct. 324.

In order to justify the removal of a cause from the state to the federal court it must appear that the case might originally have been brought in the federal court. When the parties are citizens of different districts the suit may be instituted either in the district in which the plaintiff or the defendant is a resident, and he must not only be a resident but also a citizen. *Ex parte Wisner,* 203 U. S. 444, 51 L. ed. 269, 27 Sup. Ct. 150. The especial ground upon which Harding based his motion in the Circuit Court was that at the time of the commencement of the suit in the state court he was not a resident of the district, and that none of the corporate defendants were such

residents. The Circuit Court, however, held that he was a resident and a citizen of the State of Illinois when the bill was filed in the court of that State, 182 Fed. 421, and denied his motion to remand. The Supreme Court refused to disturb this holding, basing its decision upon the general doctrine that a court having jurisdiction over the subject matter and the parties to a cause is competent to decide questions arising as to its jurisdiction, and such decisions are not open to collateral attack. *Dowell* v. *Applegate,* 152 U. S. 327, 337, 38 L. ed. 463, 467, 14 Sup. Ct. 611; *Hine* v. *Morse,* 218 U. S. 493, 54 L. ed. 1123, 31 Sup. Ct. 37. The principal case is of especial importance and interest in that it puts an end to a conflict between certain decided cases dealing with the right of the United States Supreme Court to review by mandamus, orders of circuit courts refusing to remand certain actions pending before them to the state courts. One line of cases beginning with *Ex parte Hoard,* 105 U. S. 578, 26 L. ed. 1176 and ending with *Ex parte Gruetter,* 217 U. S. 54 L. ed. 892, 30 Sup. Ct. 690, holds with the principal case and denies that the writ of mandamus may be used to subserve the purpose of a writ of error or an appeal. The affirmative of this proposition is supported by another line of cases, beginning with *Virginia* v. *Rives,* 100 U. S. 313, 25 L. ed. 667, 3 Am. Crim. Rep. 524, and ending with *In re Winn,* 213 U. S. 458, 53 L. ed. 873, 29 Sup. Ct. 515. The doctrine set forth by the last mentioned cases would seem to have resulted from a mistaken application of the rule laid down in *Virginia* v. *Rives,* supra. Here a prosecution of persons accused of murder was removed from a state to a federal court. The latter court took the prisoners from the custody of the state authorities under a writ of habeas corpus. The Supreme Court took jurisdiction of the cause, issued a writ of mandamus on the motion of the commonwealth, and directed the return of the accused to the jurisdiction of the state court. The court, however, made it plain that jurisdiction of the cause was taken only because of the extraordinary abuse of discretion disclosed by the power attempted to be exerted, and also because at that time no other adequate remedy was available. The first case in which the doctrine was applied to facts similar to those of the principal case was that of *Ex parte Wisner,* supra. Mere mention of this case will be made here, as it is fully discussed in 5 MICH. L. REV. 394. Suffice it to say that the Circuit Court applied the exceptional rule announced in *Virginia* v. *Rives,* to facts not governed by such exceptional rule. In other words they, in effect, said this: In *Virginia* v. *Rives* we decided that mandamus would lie where there was no other adequate remedy and where there had been a palpable abuse of discretion on the part of the lower court. Taking this as a premise we now decide that although there are other remedies, in the case at bar, by appeal or writ of error, mandamus will also lie. The remedies by appeal and writ of error are co-ordinate with the writ of mandamus, and the latter is equally available with the former. The successive cases of *Re Moore,* 209 U. S. 490, 52 L. ed. 904, 28 Sup. Ct. 585, 706, 14 AM. & ENG. CAS. 764, and *Re Winn,* supra, adopted this doctrine allowing the review of questions of jurisdiction by means of the writ of mandamus. Contemporaneously with the growth of this doctrine another line of cases was being developed embodying the principles set forth in the principal case. See *Ex parte Hoard,* supra,

In re Pollitz, 206 U. S. 323, 51 L. ed. 1081, 27 Sup. Ct. 729. *Ex parte Nebraska,* 209 U. S. 436, 52 L. ed. 876, 28 Sup. Ct. 581, *Ex parte Gruetter,* supra. The final affirmance of the doctrine expressed in these cases, and the express disapproval of the rule laid down in *Ex parte Wisner,* supra, establishes beyond all doubt the proposition that the Circuit Court of the United States, being a court of general jurisdiction, has the power to decide for itself whether or not it has jurisdiction to try a cause properly brought before it and further that the writ of mandamus cannot be used to subserve the purpose of a writ of error or an appeal.

STREET RAILROADS—RIGHT OF WAY AS BETWEEN VEHICLES AND STREET CARS.—P. drove his wagon down a street that intersected at a right angle with another upon which D. had a double track. When P. reached the corner, he saw one of D's cars about 125 to 135 feet away, coming rapidly toward him. He endeavored to cross the tracks and a collision occurred just as he attempted to pull his horse back off the second track upon which the car was approaching, the motorman having made no effort to check his car. *Held,* (JENKS, J., dissenting), that the superior right or preference that a street car has between streets as to vehicles, does not exist at the intersection of streets, that their rights are equal, that it is the duty of the motorman to have his car under reasonable control at crossings, and that it was a question for the jury and not for the court, to determine whether P. used due care in attempting to cross in front of the car. New trial granted. *Huther* v. *Nassau Electric R. Co.* (1911), 126 N. Y. Supp. 1105.

As to the part of the street occupied by a street railway's track and which is between crossings, the right of the traction company to use it is not exclusive, but from the fact that the cars cannot move off of the tracks, the right to the use of that part of the highway is superior to that of vehicles in that while a person may drive upon the portion occupied by the railroad's roadbed, he must exercise due care in not interfering unduly with the movement of cars, and in not affording opportunity for collisions. *Barto* v. *Beaver Traction Co.,* 216 Pa. 328, 116 Am. St. Rep. 770; *N. Chi. etc. R. Co.* v. *Zeigler,* 182 Ill. 9, 74 Am. St. Rep. 157; *Shea* v. *Potrero & B. R. Co.,* 44 Cal. 414; *Citizens etc. R. Co.* v. *Howard,* 102 Tenn. 474; *Marden* v. *Portsmouth etc. Ry. Co.,* 100 Me. 41, 69 L. R. A. 30, 109 Am. St. Rep. 476; *State* v. *Foley,* 31 Ia. 527; *Lake Roland etc. Ry. Co.* v. *McKewen,* 80 Md. 593. The courts are practically unanimous in holding that at street crossings, the traction company's cars have no superior right of any kind over vehicles, and that the right of crossing is equal, and that each must exercise the right of crossing in a reasonable and prudent manner so as not to interfere unreasonably with the right of the other. *Chicago etc. Ry. Co.* v. *Martensen,* 100 Ill. App. 306, affirmed 198 Ill. 511; *Marden* v. *Portsmouth etc. Ry. Co.,* supra; *Nashville Ry. Co.* v. *Norman,* 108 Tenn. 324; *Atlantic etc. R. Co.* v. *Rennard,* 62 N. J. L. 773; *Smith* v. *Minneapolis St. Ry. Co.,* 95 Minn. 254; *Toledo etc. Ry. Co.* v. *Westenhuber,* 22 Oh. C. C. R. 67; *Richmond Ry. Co.* v. *Garthright,* 92 Va. 627, 32 L. R. A. 220; *Helber* v. *Spokane St. Ry. Co.,* 22 Wash. 319; *Pilmer* v. *Boise Traction Co.,* 14 Idaho 327, 15 L. R. A. (N. S.) 254. The courts split on the